

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ERNEST VARA AND GLORIA VARA, §
PLAINTIFFS §
§
VS. § CIVIL ACTION NO. 5:19-cv-401
§
§
UNITED STATES OF AMERICA §
DEFENDANT § JURY TRIAL REQUESTED

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COME NOW Plaintiffs Ernest Vara and Gloria Vara, by and through their attorneys, Thomas J. Henry Law, PLLC, now come before this Court and complains of the United States of America, (hereinafter "USA"), as follows:

I.
PARTIES

1. Ernest Vara is an individual residing in Bexar County, Texas, and thus a resident of the Western District of Texas.
2. Gloria Vara is an individual residing in Bexar County, Texas, and thus a resident of the Western District of Texas
3. The Defendant is the United States of America. The Defendant, the USA, may be served with summons upon William Barr, United States Attorney General, at The Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C., 20530 and the Civil Process Clerk, agent for service of process for the United States Attorney for the Western District of Texas, at 601 N.W. Loop 410, Suite 600, San Antonio, Texas.

II.
JURISDICTION AND VENUE

4. The claims herein are brought against the USA pursuant to the Federal Tort Claims Act, 28 U.S.C. §2671 et seq. and 28 U.S.C. §1346(b) for money damages as compensation for loss of property and personal injuries that were caused by the negligent and wrongful acts and omissions of employees of the USA while acting within the course and scope of their offices and employment, under circumstances where the United States, if a private person, would be liable to the Plaintiff in accordance with the laws of the State of Texas.

5. Venue is proper under 28 U.S.C. §1391(b)(2) in that all, or a substantial part, of the acts and omissions forming the basis of this suit occurred in Bexar County, Texas, which is within the Western District of Texas- San Antonio Division.

6. Plaintiff requests a trial by jury.

III.
CONDITIONS PRECEDENT

7. Plaintiffs have fully complied with the provisions of 28 U.S.C. §2675 of the Federal Tort Claims Act.

8. This suit has been timely filed, in that Plaintiffs timely served notice of their claims on the appropriate Federal Agency.

IV.
SUMMARY

9. On or about September 28, 2016, the Plaintiff, Ernest Vara, was operating a 2008 Ford Tauras in a lawful manner while traveling eastbound on the 1000 block of Recio, in San Antonio, Bexar County, Texas. Plaintiff Gloria Vara was a passenger in the vehicle being drive by Plaintiff Ernest Vara. The Defendant's employee, who was operating a 2001 white Ford Postal Vehicle while in the course and scope of his employment, was parked behind a black pickup truck facing westbound on

the 1000 block of Recio delivering mail and when he pulled out from behind the black pickup truck and into oncoming traffic, he suddenly, violently, and without warning collided with the Vara's vehicle because his vision was impaired by the vehicle he parked behind. Roberto Velasquez, the San Antonio Police Officer assigned to the collision, assigned factors to the Defendant for failure to yield the right of way turning left and impaired visibility. The Defendant's employee was at all times acting in the course and scope of his employment with the USA and the United States Postal Service.

V.
COUNT 1 – NEGLIGENCE

10. Plaintiffs incorporate by reference herein all allegations set forth above.

11. On September 28, 2016, the Plaintiff Ernest Vara was operating a 2008 Ford Taurus in a lawful manner while traveling eastbound on the 1000 block of Recio in San Antonio, Texas.

12. The Defendant's employee was parked behind another vehicle facing westbound on the 1000 block of Recio delivering mail and when pulled away from the curb into oncoming traffic causing a collision with Plaintiff's vehicle.

13. At all times relevant hereto, the Defendant's employee was acting within the course and scope of his office and employment with Defendant, the USA, specifically as a member of the United States Postal Service.

14. The Defendant's employee, operated the vehicle in a negligent manner and violated the duty which he owed the Plaintiff to exercise ordinary care in the operation of the motor vehicle in one or more of the following respects:

- a. in failing to keep a proper lookout or such lookout, which a person of ordinary prudence would have maintained under same or similar circumstances;
- b. in failing to timely apply the brakes of the vehicle in order to avoid the collision in question;

- c. in failing to turn the vehicle in an effort to avoid the collision in question;
- d. in failing to sound horn to warn of imminent danger;
- e. in failing to yield the right-of-way; and
- f. in failing to yield the right of way turning left.

15. Each and all of the foregoing acts and/or omissions were negligent and constituted negligence and were each and all the proximate cause of the incident which forms the basis of this suit, and was a proximate cause of Plaintiff's injuries and damages.

VI.
DAMAGES

16. As a direct and proximate result of the negligent acts and omissions of the Defendant, Plaintiffs suffered bodily injuries as reflected in the medical records from the health care providers that have treated the injuries since this incident. These injuries may be permanent in nature. The injuries have had an effect on the Plaintiffs' health and well-being. As a further result of the nature and consequences of their injuries, the Plaintiffs have suffered and may continue to suffer into the future, physical pain and mental anguish.

17. As a further result of all of the above, Plaintiffs have incurred expenses for their medical care and attention. These expenses were incurred for the necessary care and treatment of the injuries resulting from the incident complained of. The charges are reasonable and were the usual and customary charges made for such services in the County where they were incurred.

18. As a further result of the injuries sustained by the Plaintiffs, there is a reasonable probability that they will require further medical care and attention and will incur future reasonable and necessary expenses for their medical care and attention.

19. Plaintiffs have also suffered losses and damages to their personal property, including but not limited to damage to their vehicle for which they have never been compensated.

20. By reason of all of the above, Plaintiffs have suffered losses and damages in a sum within the jurisdictional limits of this Court for which he now sues.

VII.
INTEREST

21. Plaintiffs further request both pre-judgment and post-judgment interest on all their damages as allowed by law.

VIII.
JURY DEMAND

22. Plaintiffs demand a trial by jury and tender payment this date of the required jury fee.

VIII.
PRAYER FOR RELIEF

23. WHEREFORE, Plaintiff is entitled to damages from the United States of America and they hereby prays that judgment be entered in his favor and against the United States of America as follows:

1. Pain and suffering in the past;
2. Pain and suffering in the future;
3. Mental anguish in the past;
4. Mental anguish in the future;
5. Past medical expenses;
6. Future medical expenses;
7. Physical impairment in the past;
8. Physical impairment in the future;
9. Physical disfigurement in the past;
10. Physical disfigurement in the future;
11. Loss of past wages;
12. Loss of future wages;
13. Loss of wage earning capacity;
14. Loss of consortium
15. Property damage; and
16. Loss of use.

Plaintiff further seeks any further and additional relief at law or in equity that this Court may deem appropriate or proper.

Respectfully submitted,

Thomas J. Henry Law, PLLC

By: /s/ George A. DeVera

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